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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,349	05/31/2001	Paul J. Bryan	4822-001	9565
24112	7590	06/14/2005		
COATS & BENNETT, PLLC P O BOX 5 RALEIGH, NC 27602			EXAMINER MENDIRATTA, VISHU K	
			ART UNIT 3711	PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/871,349
Filing Date: May 31, 2001
Appellant(s): BRYAN, PAUL J.

MAILED
JUN 14 2005
Group 3700

Paul J. Bryan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/28/05

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The grouping of claims in brief is correct.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4998736 Elrod 3-1991

IN RE JOHN NGAI and DAVID LIN

03-1524, (Serial No. 09/597,608)

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

367 F.3d 1336; 2004 U.S. App. LEXIS 9381; 70 U.S.P.Q.2D (BNA) 1862

May 13, 2004, Filed

In re MAX A. GULACK

Appeal No. 82-580

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

703 F.2d 1381; 1983 U.S. App. LEXIS 13575; 217 U.S.P.Q. (BNA) 401

March 30, 1983

Ex. Parte Breslow 192 USPQ 431 Opinion dated July 22, 1975

(10) Grounds of Rejection

Claims 1-11, 13-15 rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 11/24/04.

The grounds of rejection conform the Board of Appeals and Interferences remand dated 6/30/04 advising the examiner to consider rejection of claims 1-11 and 13-15 in light of the printed matter doctrine.

(11) *Response to Argument*

Examiner takes the position that the 35 USC 103(a) rejections of claims 1-11, 13-15 over Elrod in light of the printed matter doctrine are appropriate. The only difference between applicant's game (cards, game path) and Elrod game (cards, game path) resides in meaning and information conveyed by the printed matter and would not be patentable difference. For example Elrod cards (col.8, lines 7-34) asking the name of a band/artist can be interpreted as applicant's "band member card" or "band equipment" card. The examiner takes the position that the term "artist" on Elrod cards can be read as "band member" and the term "band" can be read as "band equipment". These differences in the printed matter are only in the meaning and information conveyed and not in the game. The teachings provided by the cited court opinions are source of motivations in the obvious rejection.

Applicant's arguments that Elrod does not provide a third deck (?) of cards are not persuasive. Elrod supplies a large number of cards (7:38-10:16) that can be divided into a large number of decks as long as each deck has plurality of cards. It may be noted that a deck only means a stack of cards.


Applicant's argument that the examiner misconstrued is not persuasive. Elrod clearly teaches groups of band member cards (8:7-34) dividing in groups by letters A

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through Z). Further in the absence of structural differences the limitation "grouping of cards" is being interpreted as a rule of playing.

Examiner further takes the position that the criticality of a game path is in the method of playing and not in the apparatus as such. The applicant is claiming apparatus.

For the above reasons, it is believed that the rejections should be sustained.

 Respectfully submitted,
Vishu K Mendiratta
Primary Examiner
Art Unit 3711

June 9, 2005

Conferees

Benjamin Layno (Primary Examiner).....

Greg Vidovich (SPE).....

COATS & BENNETT, PLLC
P O BOX 5
RALEIGH, NC 27602